



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT MILIMANI**  
**ELC NO. 712 OF 2012**

**WILSON KIPKEMOI BIRIR.....1<sup>ST</sup> PLAINTIFF**  
**ZACHARIA ADEI.....2<sup>ND</sup> PLAINTIFF**  
**WILLIAM LANGAT.....3<sup>RD</sup> PLAINTIFF**  
**JOSEPH K KOECH .....4<sup>TH</sup> PLAINTIFF**  
**RICHARD KIMANI.....5<sup>TH</sup> PLAINTIFF**  
**ANN KOSEA ISEDIA.....6<sup>TH</sup> PLAINTIFF**  
**T.NGUNYI .....7<sup>TH</sup> PLAINTIFF**  
**L.MORAGWA.....8<sup>TH</sup> PLAINTIFF**

**VERSUS**

**THE HON.ATTORNEY GENERAL.....1<sup>ST</sup> DEFENDANT**  
**COMMISSIONER OF LANDS.....2<sup>ND</sup> DEFENDANT**  
**DIRECTOR OF SURVEYS.....3<sup>RD</sup> DEFENDANT**  
**PERMANENT SECRETARY**  
**MINISTRY OF LANDS & SETTLEMENT.....4<sup>TH</sup> DEFENDANT**  
**SATO NYUMBAZ LIMITED.....5<sup>TH</sup> DEFENDANT**

**AND**

**JOSEPH K KOECH .....1<sup>ST</sup> INTERESTED PARTY**  
**RICHARD KIMANI.....2<sup>ND</sup> INTERESTED PARTY**

ANN KOSEA ISEDIA.....3<sup>RD</sup> INTERESTED PARTY  
T.NGUNYI.....4<sup>TH</sup> INTERESTED PARTY  
L.MORAGWA.....5<sup>TH</sup> INTERESTED PARTY  
SIMON KIPROTICH TOO T/A KALDIT  
SAWMILLS.....PROPOSED 6<sup>TH</sup> INTERESTED PARTY/APPLICANT  
JOSEPH KIPROP ARAP SAMOEI...PROPOSED 7<sup>TH</sup> INTERESTED PARTY  
ESTHER JEBET LETING T/A EESOM CLEARING  
AND FORWARDING AGENCIES.....PROPOSED 8<sup>TH</sup> INTERESTED PARTY

**RULING.**

1. The 6<sup>th</sup> Interested Party/Applicant filed a notice of motion dated 10<sup>th</sup> October 2019 in which he sought the following orders: -

**1. Spent**

**2. That this Honourable Court be pleased to issue orders that, Simon Kiprotich Too T/A Kaldit Sawmills being the applicant herein be joined as the 6<sup>th</sup> Interested party /Applicant in this suit.**

**3. That this Honourable Court be pleased to issue orders that Joseph Kiprop Arap Samoei and Esther Jebet Leting t/a Eesom Clearing and Forwarding Agencies be joined as the 7<sup>th</sup> and 8<sup>th</sup> Interested party respectively in this suit.**

**4. That this Honourable Court be pleased to issue an order stopping any further dealing with the parcel of land known as Nairobi Embakasi LR No.24910 pending the hearing and determination of this application.**

**5. That this Honourable Court hereby order that the 2<sup>nd</sup> and 4<sup>th</sup> Defendants deposit in this court the total sum of Ksh 90,418,750/= the same being the compensation amount paid to the 5<sup>th</sup> Defendant and the Plaintiffs pursuant to an irregular consent recorded before this court on 18<sup>th</sup> July 2013 pending the hearing and determination of this application.**

**6. That this Honourable Court be pleased to review the consent order dated 19<sup>th</sup> July 2013 with the view to setting it aside forthwith.**

**7. That the applicant /6<sup>th</sup> Interested party be granted leave to file its defence and counter claim in this suit to protect its interest.**

**8. That costs of this application be granted.**

2. The Applicant contends that in 1996 he was allocated a plot at Embakasi area of Nairobi. He had applied for the plot through Kaldit Sawmills Agency under which he was trading. As he was preparing to pay and process for title, the file in respect of the plot went missing from the Lands Registry. He tried following up the matter and found out that the interested parties herein and the Proposed 7<sup>th</sup> and 8<sup>th</sup> interested parties had fraudulently procured a fake lease and fake certificate of title which they used to claim compensation for part of his land which he said was registered as **LR 24910**.

3. The Applicant contends that the proposed 7<sup>th</sup> interested party used his business name to make part payment for the amount which was required under the letter of allotment. The Applicant argues that the dispute which centres on the allotment given to him and the processing of the fake title and lease have been subject of investigations by the Directorate of Criminal Investigations but that the investigations remain incomplete.

4. The Applicant further contends that the proposed interested parties, the interested parties in this suit as well as the 5<sup>th</sup> Defendant/Respondent sued each other in ELC 712 of 2012 and ELC 345 of 2012 before they finally entered into a fraudulent consent on 18<sup>th</sup> July 2013 in ELC 712 of 2013 which he now wants the court to set aside.

5. The Applicant depones that in 2013 and 2014, the Ministry of Lands issued demands for Land Rent in respect of the disputed property to him. He therefore contends that the fraudulent consent which was recorded in ELC 712 of 2012 be set aside and that he be allowed to file a defence and counter-claim to protect his interest.

6. The Applicant's application was opposed by the 5<sup>th</sup> Defendant /Respondent based on a replying affidavit sworn on 14<sup>th</sup> December 2019. The Respondent contends that it purchased LR No.24910 in the year 2008. The Respondent faults the Applicant for not pursuing his claim since the time of the alleged allocation for over 18 years.

7. The Respondent states that after notice of compulsory acquisition was issued, the Applicant who claims to have interest in the disputed property never came forward to claim compensation. The Respondent contends that if the Applicant has any claim, then his claim is statute barred.

8. The Respondent further argues that there is no basis upon which an injunction can be issued and that the suit herein having been compromised vide a consent, this court cannot re-open the same.

9. I have carefully considered the application by the Applicant as well as the opposition thereto by the Respondent. I have also considered the submissions by the parties herein. The consent which the Applicant seeks to set aside is said to have been recorded in ELC 712 of 2012. The Court proceedings however do not reflect this. What is clear from the court record is that this file was consolidated with ELC 345 of 2012. The proceedings were to be recorded in ELC 345 of 2012. I called for ELC 345 of 2012 but my Court Assistant informed me that all efforts to trace the said file were in vain.

10. On 30<sup>th</sup> September 2019, the Directorate of Criminal Investigations who were investigating an issue touching on the disputed property wrote to court to confirm the authenticity of the order which is now sought to be reviewed . There is no evidence whether there was any response by the court to this letter. In the absence of ELC 345 of 2012, it is difficult to assume that such consent was actually recorded.

11. The consent order sought to be reviewed was said to have been recorded in ELC 712 of 2012. As I have said hereinabove, the proceedings do not show that any consent was recorded herein. In the absence of ELC 345 of 2012 this court cannot assume that the said, consent was recorded there. This being the case I will not touch on the issue of the consent which was allegedly recorded on 19<sup>th</sup> July 2013.

12. The issues which remain for determination are firstly whether the Applicant and the proposed 7<sup>th</sup> and 8<sup>th</sup> interested parties should be allowed into this suit as interested parties. The second issue is whether an order should issue stopping any further dealings with LR No.24910 . The third and last issue is whether the court should direct the 2<sup>nd</sup> and 4<sup>th</sup> Defendants to deposit in court a sum of **Kshs.90,418,750/-**.

13. The Applicant and the 7<sup>th</sup> and 8<sup>th</sup> proposed interested party are seeking to come into this suit as interested parties. I have said hereinabove that I am unable to authenticate the consent which was said to have been recorded. If however there was such a consent, then the same must have settled the case. The question which then comes to mind is whether a party can seek to be enjoined in a concluded suit as an

interested party. In Lilian Wairimu Ngatho & Another Vs Moki Savings Co-Operative Society Limited & Another (2014)e KLR, Justice Nyamweya stated as follows:-

*“The provisions of Order 1 Rule 10(2) state that joinder of a party can be made “at any stage of the proceedings”. “Proceedings” are defined in Black’s Law Dictionary Ninth Edition at page 1324 as “the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment”.”*

14. It is therefore clear from the above case that a party cannot be enjoined in the proceedings after entry of judgement or compromise of a suit. The Applicant in his submissions relied on the case of Carol Silock Vs Kassim Sharrif Mohammed (2013) eKLR where justice Angote allowed joinder of a party after judgement had been entered. Justice Angote went ahead to allow joinder in the interest of justice as he reasoned that there was no need for the applicant to be told to go and file separate proceedings. However, in the instant case, the Applicant has already filed ELC case No. 86 of 2015 where he has named the 7<sup>th</sup> and 8<sup>th</sup> proposed interested parties as the 7<sup>th</sup> and 8<sup>th</sup> Defendants respectively. It will therefore serve no purpose to enjoin them here as the dispute in this case as well as ELC 86 of 2015 is the same. In any case, their rejoiner will not be tenable before the alleged consent if any is set aside.

15. On the second issue, the materials on record show that LR No. 24910 was granted to Joseph Kiproo Arap Samoei and Esther Leting trading as Eesom Clearing and Forwarding Agencies. The two then sold it to the 5<sup>th</sup> Defendant herein which was registered as owner on 6<sup>th</sup> October 2008. The Applicant contends that the two obtained the title fraudulently using his business name. He contends that he was allocated the land on 7<sup>th</sup> January 1996. As the Applicant has filed a suit where he is seeking the same property, he can prove his contention in that suit. This court is not interrogating the genuineness or otherwise of the alleged title at this stage of interlocutory proceedings.

16. The principles for grant of injunctions are clear. The Applicant is not yet a party to this suit. What he has exhibited is a copy of allotment which was given over two decades ago. There is therefore no basis upon which this court can make any injunctive orders in respect of the disputed property.

17. On the last issue, the Applicant seeks an order directing the 2<sup>nd</sup> and 4<sup>th</sup> Defendants to deposit Kshs.90,418,750/= in court pending the determination of this application. This prayer as well as the prayer for injunction were sought until determination of the application herein. No such order was given. The Applicant and the 5<sup>th</sup> Defendant however proceeded to submit on the same as though there were prayers that the orders were to subsist until hearing and determination of the suit herein. Be that as it may, I will nevertheless address the issue.

18. The amount which the Applicant seeks to be deposited in court is compensation money which was paid in respect of a portion of the property which was compulsorily acquired on behalf of Kenya Railways Corporation. From the materials in this file, this amount was paid out and was shared with about nine parties. This amount appears to have been paid based on the consent whose authenticity I cannot vouch for as I do not have the file to confirm whether it was actually recorded.

19. The Applicant was given an opportunity to file proceedings in court to lay claim to the compensation amount but he did not. As I have said hereinabove, I have no doubt that the money was paid out. This being the case, there is no basis upon which the 2<sup>nd</sup> and 4<sup>th</sup> Defendants can be ordered to deposit a similar sum in court. I therefore find that the Applicant’s application lacks merit. The same is hereby dismissed with costs to the 5<sup>th</sup> Defendant/Respondent.

It is so ordered.

**Dated, Signed and Delivered at Nairobi on this 24<sup>th</sup> day of September 2020.**

**E.O.OBAGA**

**JUDGE**

In the virtual Presence of : -

Mr Muriuki for 1<sup>st</sup> to 3<sup>rd</sup> Plaintiff

M/s Aguti for Mbuvi for Applicant

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**